

§884.0 Purpose.

This part sets forth the authority, policy, and procedures for making Air Force military and civilian personnel as well as dependents available to U.S. civil authorities for trial, or specified court appearances. It implements 32 CFR part 146. It applies to all Air Force military personnel, including Reserve members while on active or inactive duty training, and Air National Guard members while in federal status under title 10, United States Code (U.S.C.), all Department of the Air Force (DAF) civilian employees (including non-appropriated fund (NAF) employees), and all dependents. This part establishes the policy that Air Force members, civilian employees, and dependents are expected to comply with valid orders of federal or state courts of competent jurisdiction. It is not applicable where a state, having jurisdiction for the purpose of executing criminal process, proceeds by service of process to take custody of a military member, employee or dependent without making a formal request for the individual's delivery. This part is not intended to confer any rights, benefits, privileges or form of due process procedure upon any individuals.

Subpart A—General Provisions**§884.1 Authority for delivery of Air Force military personnel.**

Under Uniform Code of Military Justice, Article 14 (10 U.S.C. 814); Pub. L. 100-456, section 721(a); and the policy expressed in 32 CFR part 146 (DOD Directive 5525.9), a commander exercising general court-martial jurisdiction, or an installation or support group commander when authorized by the officer exercising general court-martial jurisdiction, may authorize delivery of a member of his or her command to the civil authorities of the United States or of a state of the United States under the conditions prescribed in this part. An installation commander given authority to approve requests made pursuant to this part may delegate such approval authority to a commander of a combat support group, air base group, mission support squadron, or equivalent.

§884.2 Requests under the Interstate Agreement on Detainers Act.

The Interstate Agreement on Detainers Act (Act), 18 U.S.C. App. section 1 *et seq.*, is a compact entered into by most of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States. The Act applies to military prisoners and is implemented by this section. The purpose of the Act is to encourage the expeditions and orderly disposition of charges outstanding against a prisoner and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints. The Act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request or at the request of the state where the charges are pending. When a request under the Act is received from either the prisoner or state authorities, the procedures set out in 18 U.S.C. App. section 1 *et seq.*, should be followed. The Act applies only to "a person who has entered upon a term of imprisonment in a penal or correctional institution" and is therefore inapplicable to members in pretrial confinement.

§884.3 Release on bail or recognizance.

The civil authority to whom a military member is delivered under this part may release the member on bail or on the member's own recognizance before final disposition of the charges. In the event of such a release, the commander authorized to deliver the member, or his or her designee, must, before delivery, direct the member in writing to report to a designated Air Force unit, activity or recruiting office for further instructions (see §884.18). If the civil authorities to whom delivery was authorized are in the immediate vicinity of the member's base, the activity designated ordinarily will be the member's unit. The Air Force unit, activity, or recruiting office designated will be advised of this action by the commander taking this action. The authority to whom the member reports must communicate, by the fastest practicable means, the member's name,

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rank, SSN, organization, and other pertinent information to, and request disposition instructions from, the commander who authorized the delivery of the member to civil authorities, with an information copy to the HQ AFMPC assignment office responsible for the member's Air Force Specialty Code (AFSC), as listed in Air Force Regulation 36-20¹ or Air Force Regulation 39-11. If contact with such commander is not feasible, instructions must be obtained from HQ AFMPC/DPMARS or DPMRPP2.

§ 884.4 Placing member under restraint pending delivery.

A member may be placed under restraint (see Manual for Courts-Martial (MCM) 1984, Rule for Court-Martial (R.C.M.) 304, as to types of restraint available) by military authorities pending delivery to state or federal authorities. Such restraint may be imposed upon receipt of information establishing probable cause to believe that the member committed an offense, and upon reasonable belief such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery to civilian authorities. As to the type of analysis to be undertaken in determining whether probable cause exists and whether a reasonable belief exists that restraint is necessary, see MCM 1984, R.C.M. 305(h)(2)(B), and its following discussion. There is no requirement for the formal review of restraint provided in MCM 1984, R.C.M. 305, Air Force Regulation 111-1.

§ 884.5 Returning members, employees, and dependents from overseas who fail to comply with court orders or custody decrees or who are sought for parental kidnapping.

Persons overseas who are wanted by state or federal authorities are expected to make themselves available to those authorities for proper disposition. If this does not occur, 32 CFR part 146, which implements 10 U.S.C. 814 and Pub. L. 100-456, section 721(a), authorizes and requires commanders to respond promptly to request from civil

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authorities for assistance in returning members, civilian employees, and dependents from overseas (subpart C of this part).

Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions

§ 884.6 Policy on delivery.

When such authorities request the delivery of service members, it is Air Force policy normally to deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, Rule 4, or when the appropriately identified federal officer represents that such a warrant has been issued (MCM 1984, appendix 3).

§ 884.7 Delivery to Federal authorities.

Persons desired by the federal authorities for trial will be called for, and taken into custody by, a U.S. marshal, deputy marshal, or other officer authorized by law. The officer taking custody must execute a statement in substantially the following form:

A warrant for the arrest of (name, grade, and social security number), hereinafter referred to as the "member," who is charged with (offense), has been issued by (name of issuer), and in execution thereof, I accept his or her custody.

The commander (Unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the Air Force at (Air Force activity or recruiting office nearest place of trial) upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will not be required if the member's commander has indicated that return is not appropriate. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity or recruiting office nearest place of trial) will be notified.

§ 884.8 Requests by authorities of the state in which the member requested is located.

(a) *Policy on delivery.* It is Air Force policy normally to turn over to the civilian authorities of the state, upon

¹Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.